

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN JOHN KELLY,

Defendant and Appellant.

H046361

(Santa Clara County

Super. Ct. No. C1764752)

Defendant Kevin John Kelly filed a timely notice of appeal after he pleaded no contest to two counts of grand theft by an employee, agent, or servant (Pen. Code, §§ 484, 487, subd. (b)(3)) and was ordered to pay restitution to the victim. Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Defendant was notified of his right to submit written argument on his own behalf, but he has failed to avail himself of the opportunity. We have reviewed the entire record and have concluded that there are no arguable issues on appeal. The judgment is affirmed.

I. Statement of the Case

In May 2017, defendant was charged by complaint with two counts of grand theft by an employee, agent, or servant. In March 2018, defendant pleaded no contest to the charged offenses. Prior to entry of defendant's plea, the trial court reviewed the

advisement of rights, waiver, and plea form that defendant had completed. Defendant acknowledged that he had reviewed the form with his attorney and had initialed and signed the form. Defendant also stated that he understood his rights and the consequences of his plea as explained in the form. Defendant waived these rights.

In May 2018, the sentencing hearing was held. The trial court suspended imposition of sentence and placed defendant on probation for three years. Defendant received five days of credit. The trial court imposed various fines and fees.

Following a restitution hearing in August 2018, the trial court ordered defendant to pay restitution to the victim in the amount of \$26,246.95.

II. Statement of Facts¹

In February or March 2015, Lucille Haab, the executive manager of the San Jose Music Theater (SJMT), met with defendant, who agreed to serve as the treasurer on SJMT's board of directors. Haab never told him that he would be paid for his work. The bylaws of the SJMT state that the board of directors shall receive no payment for their services. Defendant's responsibilities included keeping financial records, making bank deposits, and watching over funds. Defendant was the only person who had access to the ATM card for SJMT. Prior to making purchases with SJMT funds or withdrawing funds from SJMT's bank account, defendant was required to obtain authorization from the board of directors.

Between June and October 2015, defendant made several unauthorized ATM withdrawals. The total amount of these withdrawals was \$17,002. Defendant was not authorized to cash two checks made out from the SJMT account: one for \$2,500 and another for \$2,725. The restitution claim was reduced by \$200 because defendant had

¹ There was no preliminary hearing. The statement of facts is based on the probation report and testimony at the restitution hearing.

given Haab that amount in cash. Defendant also took money related to SJMT's fundraiser, which included at least \$3,000 for sold auction items as well as raffle and entrance fee tickets. When defendant returned the jewelry, which had been provided to SJMT on consignment for the fundraiser, the jeweler gave him the security deposit provided by SJMT. Defendant deposited \$525 to the SJMT account rather than \$1,794.99 given him by the jeweler.

III. Disposition

The judgment is affirmed.

Mihara, Acting P. J.

WE CONCUR:

Grover, J.

Danner, J.

People v. Kelly
H046361